



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 9, 1998

The Honorable John Cordray
County Judge
Panola County Courthouse
Carthage, Texas 75633

OR98-0102

Dear Judge Cordray:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111571.

On behalf of the Panola County Commissioners' Court (the "commissioner's court"), you received a request for

all public documents (proposed lease management plans, proposals, bids, offers, agreements, etc.) in the possession of yourself or your office regarding the proposed operation of a hospital, clinic or managed-care facility through the Panola County Hospital District.

You claim that the audited financial statements are excepted from disclosure under section 552.110 of the Government Code. You have submitted a representative sample of the financial information for our review.¹ As you do not mention the other types of requested information, we assume you have released it to the requestor.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified New American Healthcare Corporation ("New American"), Sisters of Charity of the Incarnate Word Health Care System (the "Sisters of Charity"), Concordium Health, L.L.C. ("Concordium"), Lifecare Management

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Services ("Lifecare"), NetCare Health Systems, Inc. ("NetCare"), and East Texas Medical Center Regional Healthcare System ("East Texas Medical") about the request for information. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). None of the companies notified by this office responded.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). You first received the request for the information on August 28, 1997. You did not seek a decision from this office until October 14, 1997. Consequently, you have not met your statutory burden, and the requested information is presumed public. Gov't Code 552.301. Section 552.110 of the Government Code is, however, designed to protect the interests of third parties. Thus, a valid section 552.110 claim overcomes the presumption that the requested information is public. Open Records Decision No. 552 (1990) at 1.

Section 552.110 protects the property and privacy interests of third parties by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In this instance neither the commissioner's court nor the companies notified of this request have demonstrated that the requested information constitutes information protected by section 552.110. Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish a prima facie case that information is trade secret). Therefore, the commissioner's court may not withhold the requested information under section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 111571

Enclosures: Submitted documents

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